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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 GRACE BURROWS, *et al.*,

10 Plaintiffs,

11 v.

12 3M COMPANY,

13 Defendant.

Case No. C19-1649RSL

ORDER EXTENDING TRIAL
DATE

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15 This matter comes before the Court on defendant's "Motion to Extend Trial Date and
16 Related Dates" (Dkt. # 131) and "Motion to Expedite" (Dkt. # 132). The Court, having reviewed
17 the submissions of the parties and the remainder of the record, denies defendant's motion to
18 expedite and grants defendant's motion to continue the trial date for the reasons stated herein.

19 **I. Motion to Expedite**

20 As the Court previously noted in a recent minute order (Dkt. # 135), the Court considers
21 defendant's motion to extend the trial date pursuant to the schedule set forth in LCR 7(d)(2).
22 Defendant relies on LCR 7(j) to support its contention that the Court should hear its motion on
23 an expedited basis. Dkt. # 132 at 2. However, LCR 7(j) states

24 A motion for relief from a deadline should, whenever possible, be filed
25 sufficiently in advance of the deadline to allow the court to rule on the
26 motion prior to the deadline. Parties should not assume that the motion will
27 be granted and must comply with the existing deadline unless the court
28 orders otherwise.

If a true, unforeseen emergency exists that prevents a party from meeting a
deadline, and the emergency arose too late to file a motion for relief from
the deadline, the party should contact the adverse party, meet and confer

1 regarding an extension, and file a stipulation and proposed order with the
 2 court. Alternatively, the parties may use the procedure for telephonic
 3 motions in LCR 7(i). It is expected that if a true emergency exists, the
 parties will stipulate to an extension.

4 The Rule does not, as defendant claims, provide an avenue for the Court to “hear motions on an
 5 emergency basis.” Dkt. # 132 at 2. It only provides that the parties may – after meeting and
 6 conferring – file a stipulation and a proposed order granting relief from a deadline, or that the
 7 parties may request that the motion be heard by telephone without the filing of motion papers.
 8 Indeed, the Local Rules specifically state that “[m]otions to shorten time have been abolished.”
 9 LCR 6(b). Accordingly, defendant’s motion to expedite (Dkt. # 132) is DENIED.

10 **II. Motion to Continue Trial**

11 Defendant asks the Court to set over the trial date and related deadlines for a period of at
 12 least sixty (60) days. Dkt. # 131 at 1. Trial is currently set for April 3, 2023. Dkt. # 94. The
 13 Court recently granted the parties’ stipulated motion to set over pretrial deadlines, and the
 14 parties’ Motions in Limine are now due by March 6, 2023 and the Pretrial Order deadline is now
 15 March 22, 2023. Dkt. # 134. The parties are also facing deadlines related to their impending
 16 settlement conference, set for March 13, 2023. Dkt. # 131 at 2. The parties must exchange
 17 settlement briefs on March 8, 2023, and the parties’ confidential settlement memoranda is due
 18 on March 10, 2023. *Id.* Finally, plaintiffs scheduled their second 30(b)(6) deposition for
 19 February 27, 2023. *Id.*

20 In determining whether to grant the requested continuance, the Court looks to Federal
 21 Rule of Civil Procedure 16. Under Rule 16, district courts must enter scheduling orders in
 22 actions to “limit the time to join other parties, amend the pleadings, complete discovery, and file
 23 motions.” Fed. R. Civ. P. 16(b)(3). In addition, scheduling orders may “set dates for pretrial
 24 conferences and for trial.” *Id.* 16(b)(3)(B)(vi). A scheduling order “controls the course of the
 25 action unless the court modifies it.” *Id.* 16(d). Once a scheduling order has been filed, the
 26 “schedule may be modified only for good cause and with the judge’s consent.” *Id.* 16(b)(4).
 27 “Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of the party seeking the
 28 amendment.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). If the

1 moving party fails to demonstrate diligence, “the inquiry should end.” *Id.* “Although the
2 existence or degree of prejudice to the party opposing the modification might supply additional
3 reasons to deny a motion, the focus of the inquiry is upon the moving party’s reasons for
4 seeking modification.” *Id.* Good cause may be found where the moving party shows (1) it
5 assisted the Court with creating a workable scheduling order; (2) that it is unable to comply with
6 the scheduling order’s deadlines due to matters not reasonably foreseeable at the time the
7 scheduling order issued; and (3) that it was diligent in seeking a modification once it became
8 apparent it could not comply with the scheduling order. *Jackson v. Laureate, Inc.*, 186 F.R.D.
9 605, 608 (E.D. Cal. 1999) (citations omitted). The district court, in supervising the pretrial phase
10 of litigation and deciding the preclusive effect of a pretrial order, has “broad discretion.” *C.F. ex*
11 *rel. Farnan v. Capistrano Unified School Dist.*, 654 F.3d 975, 984 (9th Cir. 2011).

12 The Court finds that defendant has been diligent in seeking this extension, and that it is
13 unable to comply with the scheduling order’s deadlines due to matters not reasonably
14 foreseeable at the time the scheduling order issued. Specifically, plaintiff’s second Rule 30(b)(6)
15 deposition and the upcoming settlement conference. The Court also finds that defendant was
16 diligent in seeking a modification once it became apparent it could not comply with the
17 scheduling order. *See* Dkt. # 131 at 3.

18 The Court acknowledges plaintiffs’ argument that the trial date in this case has already
19 been delayed due to COVID-19 pandemic-related scheduling challenges, Dkt. # 138 at 1-2, and
20 is sympathetic to plaintiffs’ desire to move forward with the scheduled trial date. However, the
21 Court concludes that there is good cause for setting over the trial date, as doing so will permit
22 both parties to fully prepare for both the upcoming settlement conference and trial.¹

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26 ¹ While plaintiffs argue that a continuance will prejudice their ability to schedule testimony
27 (specifically, that of Carol Dobbins, whose “work in the hospitality industry would make it difficult if
28 not impossible to attend during the summer months”), Dkt. # 138 at 2, the Ninth Circuit has made it
clear that the inquiry here centers on the moving party’s reasons for seeking the modification rather than
prejudice to the opposing party. *Johnson*, 975 F.2d at 609.

IT IS SO ORDERED.

Robert S. Lasnik
Robert S. Lasnik
United States District Judge